

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Pacific Gas and Electric Company Docket Nos. ER01-2998-004

Pacific Gas and Electric Company Docket Nos. ER02-358-004

Northern California Power Agency

v. Docket Nos. EL02-64-004
Pacific Gas and Electric Company (Not Consolidated)
The California Independent System
Operator Corporation

OPINION NO. 471-A

ORDER DENYING REHEARING

(Issued September 22, 2004)

1. In an order issued on May 10, 2004,¹ the Commission affirmed an Initial Decision² resolving transmission service rights and the right to be exempted from congestion charges under the Stanislaus Commitments (Stanislaus Commitments or Commitments). In this order, we deny the request for rehearing of Opinion No. 471. This decision benefits customers because it facilitates the inclusion of formerly grandfathered transmission customers within the Commission-approved transmission rules of the California Independent System Operator Corporation (CAISO or ISO) and properly allocates costs based upon cost causation principles.

I. Background

¹ *Pacific Gas and Elec. Co., et al.*, 107 FERC ¶ 61,154 (2004) (Opinion No. 471).

² *Pacific Gas and Elec. Co., et al.*, 104 FERC ¶ 63,029 (2003) (Initial Decision).

A. The Stanislaus Commitments

2. In 1976, Pacific Gas and Electric Company (PG&E), as part of its effort to secure licensing for two nuclear power projects, agreed in the Stanislaus Commitments to certain licensing conditions in return for the termination of an antitrust investigation by the United States Department of Justice (Department of Justice). The Stanislaus Commitments, originally a contractual agreement between the Department of Justice and PG&E,³ generally describe PG&E's obligations to provide interconnection, transmission and power services to a "Neighboring Entity" and/or a "Neighboring Distribution System."

B. The 1991 Settlement Agreement

3. In 1983, PG&E entered into separate interconnection agreements with Northern California Power Agency (NCPA) and the City of Santa Clara, California as Silicon Valley Power (Silicon Valley) (1983 Interconnection Agreements). In 1988, PG&E entered into an interconnection agreement with Modesto Irrigation District (Modesto) which extends until April 1, 2008 (1988 Interconnection Agreement). NCPA, Silicon Valley and Modesto are referred to collectively herein as "Customers."

4. In November 1991, NCPA and PG&E entered into a comprehensive settlement agreement that included further commitments by PG&E to provide services to NCPA, Silicon Valley, and other Neighboring Entities and Neighboring Distribution Systems (1991 Settlement Agreement). As a result, PG&E withdrew a series of suits against its customers based upon the understanding that the 1991 Settlement Agreement would require PG&E to abide by the Commitments which could not be extinguished before January 1, 2050.

5. On May 6, 1998, PG&E gave notice to NCPA and Silicon Valley that it intended to terminate the 1983 Interconnection Agreements. After the parties were unable to agree upon the terms of replacement interconnection agreements, in 2001, PG&E requested permission from the Commission to terminate the 1983 Interconnection Agreements and

filed unexecuted replacement interconnection agreements in Docket Nos. ER01-2998-000 (NCPA) and ER02-358-000 (Silicon Valley). On February 27, 2002, NCPA filed an

³ The Stanislaus Commitments were included in the Nuclear Regulatory Commission's construction permits and operating licenses of the Diablo Canyon Nuclear Plants.

emergency petition in Docket No. EL02-64-000 requesting, among other things, that the Commission institute a technical conference to allow the parties to reach agreement on the terms of the replacement interconnection agreements and implementation issues. On March 14, 2002, the Commission directed the Commission's Staff to convene a technical conference.⁴ The negotiations were fruitful. The parties filed a final agreement on a Replacement Interconnection Agreement with PG&E (Replacement IA), a Metered Subsystem Agreement with the CAISO and a Settlement Agreement among PG&E, NCPA, the City of Roseville, Silicon Valley and the ISO (2002 Settlement Agreement) which was approved by the Commission on August 30, 2002.⁵ The 2002 Settlement Agreement did not resolve the transmission service rights and the right to be exempted from congestion charges under the Stanislaus Commitments.⁶ Therefore, this matter was set for hearing.

II. Initial Decision and Opinion No. 471

6. The parties agreed by stipulation that only the following three issues should be addressed: (1) whether the Commitments and/or the 1991 Settlement Agreement require PG&E to provide NCPA, and other Neighboring Entities and/or Neighboring Distribution Systems, with firm transmission; (2) whether CAISO transmission fulfills PG&E's obligations under the Commitments and the 1991 Settlement Agreement; and (3) if CAISO transmission service does not fulfill PG&E's obligations under the Commitments and the 1991 Settlement Agreement, which remedy is appropriate.⁷

7. The Presiding Judge found that: (1) there is no obligation to provide firm transmission in the Commitments,⁸ (2) the CAISO's transmission service fulfills PG&E's

⁴ *Pacific Gas and Elec. Co., et al.*, 98 FERC ¶ 61,281 (2002).

⁵ *Pacific Gas and Elec. Co., et al.*, 100 FERC ¶ 61,233 (2002).

⁶ *Id.* at P 26.

⁷ April 17, 2003 Joint Stipulation of Contest Issues.

⁸ Initial Decision at P 28-30.

obligations;⁹ and (3) a remedy is not appropriate.¹⁰ In Opinion No. 471, the Commission affirmed the Presiding Judge's findings.¹¹

8. A request for rehearing was filed by NCPA. PG&E filed a motion to strike portions of NCPA's request for rehearing, as relying "primarily, if not exclusively, on either (a) extra-record evidence or (b) factual assertions of counsel with no evidentiary support."¹²

III. Discussion

9. In its request for rehearing, NCPA engages in a lengthy policy debate regarding the market redesign proposed by the CAISO and the Commission's general support for locational marginal pricing. Virtually none of the factual assertions made by NCPA are supported by record evidence. The Commission has consistently held that submission of additional factual information in a request for rehearing is not appropriate.¹³ Therefore, we will grant PG&E's request to disregard all citations to extra-record evidence. We will also disregard the unsupported assertions of counsel as well as the arguments that rest upon those assertions.

10. We address the remaining arguments on rehearing below.

Sufficiency of CAISO's Transmission Service

⁹ *Id.* at P 45.

¹⁰ *Id.* at P 46.

¹¹ Opinion No. 471 at P 19, 24-25, 29.

¹² PG&E Motion to Strike at 2.

¹³ *See, e.g., Transcontinental Gas Pipeline Corp.*, 94 FERC ¶ 61,066 at 61,278 (2001).

11. In Opinion No. 471, among other things, the Commission agreed with and adopted the Presiding Judge's finding that the Stanislaus Commitments do not preclude the payment of congestion costs. The Commission stated:

As [the Presiding Judge] pointed out, under the Stanislaus Commitments, PG&E is entitled to recover all 'costs' associated with providing service under the Commitments, and 'costs' are defined to include any costs 'which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.' In this instance, we are the 'regulatory authority having jurisdiction,' and we approved the ISO's usage charges (including congestion charges) as part of the rates in the CAISO Tariff.* Accordingly, the requirement to pay congestion costs under the CAISO Tariff is not inconsistent with the rights under the Stanislaus Commitments and the 1991 Settlement Agreement.^[14]

* *Pacific Gas & Elec. Co, et al.*, 81 FERC ¶ 61,122 at 61,457-58 (1997) (*PG&E*).

12. The Commission also made several additional determinations, including: (1) the CAISO Tariff not only allows the ISO to meet PG&E's obligations set forth in the Commitments but also exceed them because, under the CAISO Tariff, transmission service can be purchased through the payment of congestion costs even if the transmission facilities are already fully committed; and (2) the record does not support the contention that a new plant cannot be financed under the CAISO Tariff.¹⁵

13. NCPA argues that the fact that one can bid against other users of the transmission system to obtain the right to get one's generation into a congested zone is not a benefit which exceeds the rights to which NCPA is entitled.¹⁶ We disagree. As the Commission

¹⁴ Opinion No. 471 at P 25 (*citations omitted*).

¹⁵ *Id.* at n.40.

¹⁶ NCPA also argues that, while the Commission stated in Opinion No. 471 that the Commission had approved usage charges (including congestion costs) as part of the rates in the CAISO Tariff, the *PG&E* case the Commission cited did not impose congestion costs for transactions within the PG&E area. While NCPA is correct that *PG&E* addressed inter-zonal, not intra-zonal congestion, the Commission has approved the CAISO's allocation of intra-zonal congestion costs. *See California Indep. Sys.*

explained, the option to purchase transmission service under the CAISO Tariff through the payment of congestion costs even if the transmission facilities are committed exceeds the terms of the Commitments, which do not afford the right to transmission if the necessary facilities are committed at the time of the request for the period for which service is requested.¹⁷ Although NCPA may have to pay higher costs (*i.e.*, additional redispatch costs), the Presiding Judge found that such payments would be required by the terms of the Stanislaus Commitments,¹⁸ and we affirmed that finding.¹⁹ NCPA does not provide any evidence which disputes this finding. Accordingly, we deny rehearing on this issue.

14. Finally, NCPA challenges the Commission's conclusion that "the record does not support the contention that a new plant cannot be financed under the CAISO Tariff." NCPA argues that the record citations in Opinion No. 471 are "inapposite" to the basic differences between cities and cooperatives and general for-profit merchant generators.²⁰ It is not clear what NCPA is requesting here; NCPA has not pointed to any record evidence disputing our conclusion that the record does not support NCPA's contention. A party has the burden of supporting its assertions.²¹ Therefore, we deny rehearing on this issue.

The Commission orders:

Operator Corp., 88 FERC ¶ 61,146 (1999) (approving, in relevant part, ISO Tariff sections under which the ISO's costs for intra-zonal congestion management are charged to all Scheduling Coordinators within the congested zone based on their metered demands and exports), *reh'g denied*, 101 FERC ¶ 61,045 (2002).

¹⁷ Opinion No. 471 at P 25, n.40.

¹⁸ Initial Decision at P 40.

¹⁹ Opinion No. 471 at P 25.

²⁰ Request for Rehearing at 29-30.

²¹ *See, e.g., Sierra Pacific Power Co.*, 106 FERC ¶ 61,155 (2004) ("Requiring a party to provide some evidence in support of a bare allegation does not amount to a shift in the burden of proof").

NCPA's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.